

HICKS DEMURRER GRANTED: On Friday, March 28, Judge Ken Kawaichi granted American's demurrer to this complaint, ending the case. In it's demurrer, American argued that plaintiff Samuel Hicks, who had a portion of his lung removed in 1981 because of lung cancer, did not file this action within one year following the discovery of his injury. Plaintiff countered by arguing that a statute of limitations defense was unavailable to American because Hicks involved a "latent occupational disease" that arose from the synergistic relationship between tobacco and asbestos. Plaintiff also argued that, from a policy standpoint, a statute of limitations defense was merely a "technical defense" that risked the "forfeiture of Plaintiff's rights."

Judge Kawaichi ruled that the California law on which plaintiff based his argument was "not broad enough, either by a fair reading of the context in which it is used or by legislative history," to allow him to claim that the synergistic effect of asbestos and cigarette smoke exposure extended the one-year limitation. "Even a liberal reading of the statutory language cannot avoid the clear language and content of the statute," the Judge writes. Judge Kawaichi also rejected plaintiff's argument that the statute of limitations defense limited a plaintiff's right to sue. "Application [of the California law] does not deprive plaintiff of a remedy and is reasonable under the circumstances raised by the pleadings." Judge Kawaichi allowed Mr. Hicks 20 days to amend his complaint.

PALMER TRIAL SET: At the hearing before Judge Mazzone on Tuesday, April 1, the trial was set to begin on May 5. Trial briefs have been filed by both parties and discovery is complete. Palmer, filed in 1983, is pending in federal court in Boston. Liggett is the sole defendant.

NEW CASE IN UPSTATE NEW YORK: On March 20, a new action was begun against Philip Morris and Lorillard by the wife of an attorney who died of lung cancer on March 28, 1985; attorneys from the decedent's firm are representing her. Plaintiff Barbara J. Carr, suing as the Executrix of Bradley J. Carr's estate, claims Mr. Carr smoked Marlboro Light and Kent. She does not specify the years in which he smoked either brand. Mrs. Carr claims her husband relied on both Philip Morris' and Lorillard's advertising in continuing to smoke because the advertising claimed that cigarettes with reduced tar and nicotine were safer than cigarettes "with higher nicotine contents." Plaintiff seeks \$5,000,000 "for the conscious pain and suffering of the decedent" and \$15,000,000 in damages for the plaintiff and the seven Carr children. The Carr children are not plaintiffs in this action. Martindale-Hubbell suggests Mr. Carr was a named partner in the Syracuse, New York firm of Welch, Welch & Carr. Carr is pending in the Supreme Court of Onondaga County, New York (Syracuse). Lorillard was served April 2.

NEW SYNERGY CASE IN LOUISIANA: American Brands is the only tobacco defendant in an action filed February 27 in the United States District Court, Western District of Louisiana. Several asbestos companies, including GAF, are also named. Plaintiff Ruby Fruge LeJeune is represented by the New Orleans firm of Gertler & Gertler. A Lexis search indicated that the Gertler firm has been involved in several other asbestos actions in recent years.

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Ruby LeJeune and her four children are suing individually and on behalf of Christoval LeJeune, Ruby LeJeune's husband and the childrens' father. They claim Mr. LeJeune died of lung cancer on May 5, 1985. No brand or smoking history is specified in the complaint. Plaintiffs allege that American Brands did not adequately warn smokers that "the risk of lung cancer in users [of cigarettes] who were also exposed to asbestos products would be increased synergistically and exponentially." Ruby LeJeune seeks \$1,000,000 in actual damages, and each of the four children seeks \$250,000 in actual damages. American was served March 14.

FLYNN: At last report, the often-rescheduled pre-trial conference was still set for next Thursday, April 10. A trial date could be set at the conference.

MARSEE: The trial is still scheduled to begin on May 12, one week after Palmer is scheduled to begin. Depositions of United States Tobacco officers are proceeding.

CIPOLLONE/HAINES: On March 12, the Third Circuit granted defendants' motion to tax the costs they incurred during their appeal of Judge Sarokin's protective order. On March 26, Liggett filed a bill with plaintiff for \$2,364.28 to cover the cost of docketing fees and the printing of the briefs and appendixes.

Both parties recently submitted letters to Judge Sarokin on whether additional briefs should be submitted on the protective order. Marc Edell, representing plaintiff in a March 25 letter, said that "[t]he Court already has all of the necessary documentation and Briefs in order to comply with the 3rd Circuit's Writ of Mandamus and no further information need be provided." In a March 26 letter, Alan Naar, representing the defendants, argued that "it is essential that the parties be afforded the opportunity to rebrief this matter in light of the Third Circuit's analysis."

HULIN: On March 19, plaintiffs filed 38 interrogatories and 5 requests for admission against American Brands, the only cigarette manufacturer named in the case. The interrogatories ask about various subjects, including what "utility value" American gains from the sale of tobacco products; the consumer benefits American believes comes from cigarettes; whether identified cigarettes have "been altered in chemical composition since first being marketed"; whether identified cigarettes were tested for "potential health hazards"; whether American had ever tested the alleged synergistic effect between cigarette smoke and asbestos; whether American had a research department; whether American has had a medical department. Neither the interrogatories nor the requests are limited by brand, year, disease, geographic region or sex. Hulin is pending in federal court in Baton Rouge, Louisiana. Several asbestos companies are also defendants.

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